



ACQUISITION AND
TECHNOLOGY

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

4 JAN 2001

MEMORANDUM FOR SERVICE ACQUISITION EXECUTIVES
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DEPUTY UNDER SECRETARY OF DEFENSE (ACQUISITION
REFORM)
DIRECTOR, DEFENSE PROCUREMENT

Subject: Reform of Intellectual Property Rights of Contractors

On September 5, 2000, I directed the Deputy Under Secretary of Defense (Acquisition Reform) (DUSD(AR)) to develop a layman's guide on the treatment of intellectual property for training purposes throughout the DoD. The goal of this effort is to make this complex field more understandable for the acquisition workforce to negotiate intellectual property terms and conditions that will attract commercial entities to meet defense needs. I also directed acquisition personnel and legal counsel work closely together to tailor, and if necessary waive, requirements that place upon commercial industry requirements that are anathema to smart, and reasonable business practices.

DUSD(AR) convened a Rapid Improvement Team (RIT) to identify issues thwarting commercial industry involvement at the prime and sub-contractor level. This effort highlighted four immediate policy areas the acquisition community should be emphasizing now within existing regulations:

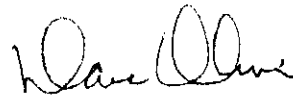
- emphasize use of specifically negotiated license rights;
- exercise of flexibility when negotiating patent rights;
- use of performance-based acquisition strategies that may obviate the need for data and/or rights; and,
- acquire only data and/or rights to data truly needed for a given acquisition.

The Department identified a number of other findings requiring action. I therefore direct the following actions be taken to improve the understanding and treatment of industry's intellectual property rights:

- DUSD(AR) establish an IP Working Group with the components and appropriate industry advisors. This group will develop a strategy to:
 - Evaluate possibilities for patent clause deviations enabling contracting officer flexibility in R&D contracts.
 - Explore DoD current practices with unsolicited proposals, non-disclosure agreements and intra-governmental distribution of information.
 - Revise DFARS Part 227.
- DUSD(AR) publish the IP guide, being developed as a collaborative effort, by March 2001.
- DUSD(AR) develop a training approach including an aggressive re-education campaign with the Defense Systems Management College and alternative strategies to meet government needs early in the acquisition planning stage.



Intellectual property rights are fundamental to commercial firms since their intellectual and creative assets are their most valued commodities. Intellectual property is the lifeblood of world-class commercial companies engaged in leading-edge technologies. Working to improve the treatment of intellectual property rights must be a Department priority to ensure our ability to access the very best technologies for our future weapons systems, business processes and more.

A handwritten signature in black ink, appearing to read "Dave Oliver". The signature is fluid and cursive, with the first name "Dave" and last name "Oliver" clearly distinguishable.

Dave Oliver